IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/07/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.21291 OF 2003
AND
CRL.M.P.No.6110/2003

G.Valappan ... Petitioner

-Vs-

S.Madhavan Pillai ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the reliefs as stated therein.

!For petitioner : Mr.D.Rajagopal

^For Respondent : ---

:O R D E R
The above criminal original petition has been filed under Section 4 82 of the Code of Criminal Procedure praying to call for the records in STC.No.1622/2003 pending on the file of the Court of Judicial Magistrate No.II, Nagercoil, Kanyakumari District and quash the same as illegal.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for the petitioner, it comes to be known that the respondent herein has filed a complaint in S.T.C.No.1622 of 2003 on the file of the Court of Judicial Magistrate No.II, Nagercoil for the alleged offence punishable under Section 138 r/w.142 of the Negotiable Instruments Act thereby alleging that the cheque issued by the petitioner herein for a sum of Rs.91,000/= got dishonoured due to insufficiency of funds.

3. In this backdrop, the petitioner has come forward to file the above Criminal Original Petition praying to quash the said criminal proceedings on ground that in the notice dated 7.7.2000 issued by the respondent, there is a demand of amount more than what has been mentioned in the dishonoured cheque.

4. A perusal of the notice dated 7.7.2000 issued by the respondent/complainant to the petitioner/accused would reveal that the complainant required the petitioner to pay the sum of Rs.91,000/= being the cheque amount and Rs.300/= towards the cost of the notice to the complainant and it is this amount of Rs.300/= which is alleged to be the amount claimed in

excess by the complainant.

5. It is common knowledge that while issuing any notice, whether under civil laws or under the provisions of the Negotiable Instruments Act, the amount spent towards the issuance of the notice would also be claimed by the issuing party from the other side and it cannot be the ground for praying the extraordinary relief of quashing the criminal case.

6. In support of his case, the learned counsel for the petitioner would also cite a judgment of the Calcutta High Court rendered in GOPA DEBI OZHA vs. SUJIT PAUL reported in 1995 Cri.L.J.3412 wherein it has been held that `notice need to be given demanding cheque amount only and the notice demanding amount higher than that mentioned in cheque is vague and illegal'.

7. In the above said case, the accused issued a cheque for Rs.5,79,000/= in favour of the complainant and on the same being dishonoured, the complainant issued a legal notice claiming a sum of Rs.6,50,000/= instead of Rs.5,79,000/= borne by and in such circumstances, the learned Judge of the Calcutta High Court has observed in the manner extracted supra. But, here is a case, wherein along with the cheque amount, the sum of Rs.300/= being the costs of the notice, was claimed by the complainant. Hence, the said judgment cannot be applied to the facts of the case in hand.

In result, the above criminal original petition is dismissed.

Consequently, Crl.M.P.No.6110 of 2003 is also dismissed.

Index: Yes
Internet: Yes

Rao

To
The Judicial Magistrate No.II,
Nagercoil,
Kanyakumari District